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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/241,653	02/02/1999	HERMANN WAGNER	C1041/7002-H	8996

7590 05/05/2004

HELEN C LOCKHART  
C/O WOLF GREENFIELD & SACKS PC  
FEDERAL RESERVE PLAZA  
600 ATLANTIC AVENUE  
BOSTON, MA 022102211

EXAMINER

ZARA, JANE J

ART UNIT	PAPER NUMBER
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1635

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

### Application No.

09/241,653

### Applicant(s)

WAGNER ET AL.

### Examiner

Jane Zara

### Art Unit

1635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-41 and 51-74, 78-103 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27-41, 51-65, 73 and 74 is/are allowed.
- 6) ☒ Claim(s) 1-9, 13, 15-26, 66, 69-72 and 78-103 is/are rejected.
- 7) ☒ Claim(s) 10-12, 67 and 68 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-5-01, 12-11-03, 2/12/04</u> | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This Office action is in response to the communication filed 2-12-04.

Claims 1-13, 15-41, 51-103 are pending in the instant application.

#### ***Information Disclosure Statement***

No IDS has been submitted for February 18, 2003, as alleged by Applicant. Perhaps Applicant was referring to the IDS filed February 12, 2004. Appropriate clarification is appreciated on this matter. If Applicant is correct about this date, please resubmit the proper references/citations for consideration. Attached please find signed IDS's from those filed 7-5-01, 12-11-03 and 2-12-04.

#### ***Response to Arguments and Amendments***

##### **Withdrawn Rejections**

Any rejections not repeated in this Office action are hereby withdrawn.

##### **Maintained Rejections and Rejections Necessitated by Amendments**

Claims 1-9, 13, 15-26, 66, 69-72, 78-103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krieg et al [Cold Spring Harbor meeting abstract, Molecular Approaches to the control of infectious diseases, p. 96] in view of Krieg et al [USPN 6,218,371] for the reasons of record set forth in the Office action mailed 10-6-03.

Applicant's arguments filed 2-12-04 have been fully considered but they are not persuasive. Applicants argue that the prior art of record does not render the instant invention obvious because Krieg teaches antigens sources as living organisms and

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other antigens (e.g. from non-living sources) are therefore not obvious. Contrary to Applicants' assertions, both live antigens and non-living sources of antigens have been used for stimulating an immune response in an organism. It would have been obvious to utilize non-living sources of antigens for immunostimulation, this has been routinely done by immunologists for several decades. Therefore, the distinction that Applicants hope to make by inserting the limitations of non-living sources of antigenic material does not render the instant invention non-obvious over the prior art. One of ordinary skill in the art would have been motivated to utilize antigens from non-living sources to generate an antigenic response in an organism in combination with the administration of and ISS. One of ordinary skill in the art would have expected that non-living sources of antigens would provide antigenic determinants eliciting an immune response in an organism. This added limitation does not render the instant invention non-obvious.

#### ***Allowable Subject Matter***

Claims 10-12, 27-41 and 51-65, 67, 68, 73, 74, -appear free of the prior art of record.

#### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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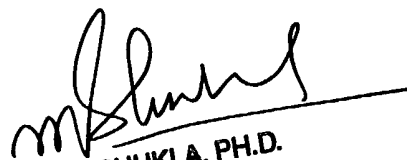
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Certain papers related to this application may be submitted to Art Unit 1635 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). The official fax telephone number for the Group is **703-872-9306**. NOTE: If Applicant *does* submit a paper by fax, the original signed copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jane Zara** whose telephone number is **(571) 272-0765**. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader, can be reached on (571) 272-0760. Any inquiry regarding this application should be directed to the patent analyst, Katrina Turner, whose telephone number is (571) 272-0564. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

JZ

4-28-04

  
RAM R. SHUKLA, PH.D.  
PRIMARY EXAMINER